



WORLD INSTITUTE ON DISABILITY

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June 29, 1998

Federal Communications Commission
Office of the Secretary Room 222
1919 M. Street, N.W.
Washington, DC 20554

RE: WT Docket No. 96-198

Dear FCC Secretary,

The World Institute on Disability is pleased to submit these comments on the Notice of Proposed Rulemaking regarding implementation of Section 255 of the Telecommunications Act of 1996.

Enclosed please find ^{one original plus} nine copies of our comments along with an IBM diskette with the comments in Text, Microsoft Word and WordPerfect 5.0 formats.

Sincerely,

Betsy Bayha
Director, Technology Policy

DIVISION ON
TECHNOLOGY
POLICY

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of
Implementation of Section 255 of the
Telecommunications Act of 1996

WT Dkt. No. 96-198

COMMENTS OF
The World Institute on Disability

I. Introduction

The World Institute on Disability submits these comments to the Federal Communications Commission on its proposed Section 255 rules. The World Institute on Disability (WID) is a non-profit research, training and policy development center led by persons with disabilities located in Oakland, California. Founded in 1983 by leaders of the Independent Living movement for people with disabilities, WID has a reputation for leadership, innovation and quality work.

In the area of Technology Policy, WID has played a leading role in advocating Universal Design of telecommunications and information technology. WID actively collaborated with a coalition of disability organizations which advocated for disability access language in Section 255 of the Telecommunications Act of 1996. WID also served on the Telecommunications Access Advisory Committee which advised the Architectural Transportation Barriers Compliance Board ("Access Board") in developing guidelines for implementing Section 255.

We applaud the FCC for issuing proposed rules to implement Section 255 of the Telecommunications Act of 1996. Increased access to telecommunications equipment is critical to expanding employment, educational, and recreational opportunities for individuals across the broad range of disabilities. We urge the FCC to adopt the suggestions contained in these comments so that the needs of people with disabilities are fully considered in the design, development, and fabrication of telecommunications products and services. As a cross-disability organization, WID is committed to pursuing policies that result in access for people with all types of disabilities. We are particularly concerned about access to telecommunications and new communications technologies which are rapidly proliferating. We know that many, if not all of these services and products can open up whole new vistas of opportunity for people with disabilities. Yet, all too often, the full potential of these products and services is not realized because they are not accessible.

We have already seen how digital wireless telephones can create access barriers for many people who use hearing aids or those who require enhanced volume amplification. As telecommunications technologies become smaller and more portable, they often become more difficult to manipulate and even to see. The increasing use of LCD panels and other visual displays on telephone equipment creates barriers of access for blind and visually impaired consumers. And rapid fire automated voice processing systems create access barriers for many people with hearing loss as well as those with cognitive disabilities. These are but a few examples of the many barriers confronting people with disabilities as they try to reap the benefits of telecommunications technology.

II. Adoption of Access Board Guidelines

We strongly urge the Commission to adopt the Section 255 guidelines which were issued by the Architectural and Transportation Barriers Compliance Board (Access Board) on February 3, 1998. Congress had given the Access Board the primary authority to draft these guidelines, which should now be enforced by the FCC. Although the Access Board guidelines apply to equipment manufacturers, we recommend that the FCC apply these as well to service providers.

The guidelines are comprehensive, and are the product of the Telecommunications Access Advisory Committee, which consisted of representatives from both consumer and industry organizations. These guidelines were developed on a consensus basis with input from consumers, researchers, industry representatives and disability advocacy organizations. The effort to reach consensus among the TAAC representatives was a long and difficult process, but ultimately a successful one. The TAAC worked through and resolved many contentious issues regarding how to implement Section 255. WID therefore encourages the FCC to take advantage of the work that has already been done by the TAAC and adopt the guidelines that it developed.

The Commission's approach to the TAAC guidelines is too vague and, absent greater clarity about their scope, may result in confusion and misinterpretation of the Commission's intent on the extent to which they should be followed.

In addition to the guidelines on achieving accessibility, we especially urge the FCC to adopt and enforce the following guidelines for both service providers and equipment manufacturers:

- Where market research on products or services is performed, individuals with disabilities should be included in the populations researched;
- Where product design trials and pilot demonstrations are conducted, individuals with disabilities should be included in these activities;
- Reasonable efforts should be made to validate access solutions through testing with individuals with disabilities or related organizations;

- Manufacturers and service providers should be required to provide access to product and service information and documentation on products and services and their accessibility features, including information contained in user and installation guides. To the extent that such information is made available to the general public, it should be made available in accessible formats or modes upon request, at no extra charge. Manufacturers should also include the name and contact means for obtaining information about (1) accessibility features and (2) how to obtain documents in alternate formats, in general product information. Additionally, customer and technical support provided at call and service centers should be accessible by people with disabilities. For people who are deaf or hard of hearing, captioning on video cassettes containing product instructions, direct TTY access to customer service lines, text transcriptions for audio output on Internet postings, and automated TTY response systems that detect whether a caller is using voice or TTY and which enable the caller to complete the call in an accessible format, should be used to comply with these access requirements. For people who are blind or who have low-vision audio description on video cassettes containing product instructions; product literature, and in particular operating instructions should be available in Braille, large print, on audiocassette and electronically. Likewise, marketing conducted on the World Wide Web should be presented in accessibly so it can be read by assistive devices and with captioned audio and described visual content;
- The Access Board guidelines make clear that in addition to covering new products, Section 255 covers existing products that "undergo substantial change or upgrade, or for which new releases are distributed." The changes to which this statement refers are those that affect the functionality of the product, rather than cosmetic changes. It is critical for both manufacturers and service providers to consider disability access as they make substantial changes or upgrades to their products;
- The Access Board's guidelines do not permit manufacturers to make changes that reduce access to products. This is intended to ensure that individuals with disabilities are not forgotten, as improvements and upgrades to products and services are performed. It is critical for the FCC to adopt this guideline so that individuals with disabilities are not treated as second class consumers. Although we do not want to stifle innovation, we want to ensure that where improvements are made to products and services, the access function will be maintained. While we understand that the form of achieving access may need to change, there must be some assurance that some means of effective access continues to be available;
- The Access Board's guidelines set forth certain technical standards for compatibility with specialized customer premises equipment, including compatibility with TTYs and hearing aid compatible telephones. These, too, should be adopted in the FCC's final rules.
- The FCC's proposed rules say that software will be covered only if the software is included with a telecommunications product. If it is marketed separately, the FCC has proposed that it not be covered by Section 255. We oppose this interpretation of Section

255. Rather, so long as software has functions that are integral to the provision of telecommunications, it should be covered under the FCC's new rules. This would be consistent with the Access Board guidelines which cover software, hardware, or firmware that are integral to telecommunications and CPE equipment, as well as functions and features built into the product and those provided from a remote server over a network.

III. Individual Product Assessment

We support the FCC's decision to require an assessment of accessibility and compatibility for each product. This is what Section 255 requires, and as stated in the Access Board guidelines, the assessment as to whether access can be achieved "cannot be bypassed simply because another product is already accessible." Rather, the goal of Section 255 is to achieve, where readily achievable, universal design for as many disabilities as possible. Only if that is not achievable, then is it reasonable to view the overall accessibility of the provider's products or services to determine how other functionally similar products and services can be made accessible.

IV. Enhanced Services

WID is deeply concerned that enhanced services may not be covered under the FCC's new rules. The Telecommunications Act of 1996 emphasized the need to bring all the citizens of our country the benefits of advanced telecommunications technologies. The purpose of Section 255 was to ensure that this objective would be achieved for individuals with disabilities. This objective will be defeated if we are only provided with access to little more than basic telephone service. Voice mail, interactive telephone prompt systems, and Internet telephony have already become mainstream services and are critical to successfully participating and competing in our society. These services must be made accessible if the true intent of Section 255 - to achieve universal telecommunications access - is to be realized.

We understand that the proposed rule in the NPRM is consistent with FCC policy generally on the definition of "telecommunications service." However, it is important for the FCC to respond to the fact that these regulations are also part of the federal government's disability policy. From this broad perspective, it makes little sense for these regulations, which interpret a new section of the Telecommunications Act of 1996, to reiterate existing policy as it is found in Title IV of the Americans with Disabilities Act (ADA). The ADA already applies to basic telecommunications services. If Congress had wanted to modify existing law that applies to access to basic services for people with disabilities, it would have amended Title IV of the ADA. Section 255 defines new policy, and the only reasonable way for it to do so is to cover enhanced services.

The rapid pace of technological change in the telecommunication industries means that what is enhanced service today may become basic service tomorrow. If, under Section 255, the line dividing "Basic" from "Advanced" services is tightly drawn and only the most basic Plain Old Telephone Service is deemed to be covered under Section 255, then most of the new developments in telecommunications services could conceivably be designed, developed

and fabricated in such a way that they do not provide disability access. If that is the case, then there is the clear possibility that as these advanced products and services migrate to the realm of basic services, it will be far less easy and far more costly to make them accessible to and usable by people with disabilities. The end result of this scenario would be a situation where, years down the road, as the definition of basic services evolves, many of these services will not be accessible to people with disabilities, in contravention of the intent of Section 255.

V. Readily Achievable Determinations

Under Section 255, manufacturers must make their products accessible or compatible if it is readily achievable to do so. The "readily achievable" language is from the ADA and involves a balancing of the nature and costs of including an access feature with the overall financial resources of the covered entity (and the resources of its parent corporation, where applicable). We accept the FCC's suggestion that technical feasibility also may be considered in determining whether access to a product or service can be achieved.

However, we oppose considering the extent to which an accessible product can be marketed (when compared to inaccessible products), and the extent to which the costs of providing access will be recovered, in readily achievable determinations. These are not permissible factors under the ADA, and should not be included in a readily achievable analysis under Section 255. Furthermore, developing a workable cost model for this proposal would be extremely difficult to do, since it often occurs that features developed initially to provide disability access become standard features on the basic unit. One such example is vibrating ringers on pagers and wireless phones which were initially developed to provide access for deaf users, but have now become a standard feature on many wireless technologies. Keeping separate accounts on accessibility features to calculate a cost-benefit analysis would be unduly burdensome to manufacturers and may be difficult if not impossible to calculate with any degree of accuracy.

It is simply not acceptable, nor should the FCC attempt, to introduce the concept of cost recovery under Section 255. This goes far beyond the interpretation of "readily achievable" as defined in the ADA. Indeed the need for Section 255 grew from the recognition that a reliance on free market incentives alone is not sufficient to result in accessibility of telecommunications.

VI. Complaint Process

We are confused by the FCC's proposed complaint process, and in particular are uncertain as to when an individual has the right to move from the "fast track" to the "informal" or "formal" complaint processes, or when a complaint would be moved to an alternative dispute resolution process. We request clarification of these points in the final rules, so that consumers may fully understand the means available to seek redress under Section 255. Additionally, we adamantly oppose a rule that would require consumers to first receive approval from the FCC before being permitted to bring a formal FCC complaint. This is not a

requirement for other formal complaints brought before the Commission and appears to be discriminatory against individuals with disabilities.

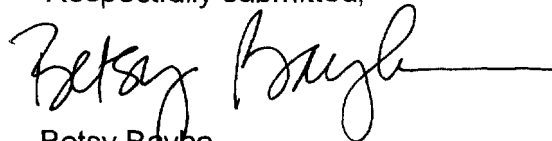
We do support the following FCC proposals concerning consumer complaints:

- There should be no filing fees for informal or formal complaints, and fees that currently exist for filing complaints against common carriers should be waived for complaints brought under Section 255. Waiving these fees would be in the public interest.
- There should not be any time limit for filing complaints, because one never knows when he or she will discover that a product or service is inaccessible.
- Consumers with disabilities should be able to submit complaints by any accessible means available.
- Manufacturers and service providers should be required to establish contact points in their companies that are accessible to consumers with disabilities.

Conclusion

WID thanks the FCC for the opportunity to submit these comments, and urges the FCC to act promptly in issuing rules that will fully ensure telecommunications access by individuals with disabilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Betsy Bayha", followed by a horizontal line.

Betsy Bayha
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